IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2671 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

G S R T C

Versus

CHANDUBHAI D VASAVA

Appearance:

MR HARDIK C RAWAL for Petitioner No. 1

MR PRABHAKAR UPADHYAY for MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 05/07/2001

ORAL JUDGEMENT

1. By way of this petition under Article 227 of the Constitution, the Gujarat State Road Transport Corporation has challenged the award of the Labour Court, Surat in Reference (LCS) No.267/87 whereby the respondent

- conductor is ordered to be reinstated without backwages and with the punishment of stoppage of one increment with permanent effect. The impugned award is dated 25.10.1988 and, as stated at the Bar, despite an injunction against the operation of the award, the respondent is already re-employed in the service of the petitioner. Accordingly, in fact, the respondent has already put in almost 12 years of service after the impugned award.

2. It appears from the impugned award that the respondent was charged with the misconduct of not issuing tickets after collecting fare. He was dismissed after departmental enquiry and the respondent did not challenge the legality of the departmental enquiry before the Labour Court to which his demand and dispute were referred. The Labour Court has, after appreciation of evidence and consideration of the contention that the amount alleged to have been misappropriated was as small as Rs.2.70 paise and that the past record of the respondent was absolutely clear, awarded reinstatement in exercise of the powers conferred by Section 11-A of the Industrial Disputes Act. Thus, finding the order of dismissal to be a disproportionate punishment, the Labour Court modified the punishment to stoppage of one increment and denied the backwages. The learned counsel for the petitioner vehemently argued that in case of proved misconduct involving dishonesty, no lenient view ought to have been taken and the order of dismissal ought to have been upheld. The learned counsel for the respondent submitted that looking to the past record of the respondent and the amount involved in the misconduct, the impugned order is made in the judicious exercise of powers conferred on the Labour Court and this Court should not interfere with the same in exercise of the powers conferred under Article 227 of the Constitution. It was also submitted on behalf of the respondent that after 12 years of re-employment, the respondent does not object to imposition of a further punishment by way of stoppage of two more increments with permanent effect.

3. In view of the submissions as above and in the peculiar facts and circumstances of the case, it would meet the ends of justice if the order of reinstatement made in the exercise of powers under Section 11-A of the Industrial Disputes Act is sustained with the modification that the respondent shall suffer further punishment of stoppage of two more increments with permanent effect with effect from the date of the original order of dismissal. The recoveries, if any, shall however not be effected at a stroke but shall be suitably spread over a period so as not to be more than

10% of the current wages of the respondent. Accordingly, the petition is partly allowed and the impugned award is modified to the extent that there shall be stoppage of three increments with permanent effect from the date of the order of dismissal of the respondent. The rest of the award remains intact. This order is made in the peculiar facts and circumstances of the case and shall not be a precedent for any other case.

Sd/-

05.7.2001 (D.H.Waghela, J.)

(KMG Thilake)